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OFFICE OF FINANCIAL AND INSURANCE SERVICES
DEPARTMENT OF LABOR & ECONOMIC GROWTH
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BILL ANALYSIS

BILL NUMBER: Senate Bill No. 540 (As passed the Senate)
TOPIC: Exemption from licensing for employees of PEOs
SPONSOR: Senator Sanborn
CO-SPONSORS: Senators Bishop, Van Woerkom, Jacobs, and Stamas
COMMITTEE: Committee on Banking and Financial Institutions
Analysis Done: July 11, 2005

POSITION

The Office of Financial and Insurance Services (OFIS) is neutral regarding this legislation.

PROBLEM/BACKGROUND

Currently, the Mortgage Brokers, Lenders and Servicers Licensing Act (MBLSLA) and the Secondary Mortgage Loan Act (SMLA) require individual loan officers to be licensed unless they are working as an employee of another licensed or registered entity. Neither the MBLSLA nor the SMLA defines employee. Because of this gap in the laws, the Commissioner issued a bulletin in November 2003 providing guidance on employees. OFIS maintains that an employee is one paid and issued a W-2 by the licensed or registered mortgage company and is under the general control and supervision of the licensed or registered mortgage company.

The bulletin also provides that a loan officer that is leased by the mortgage company and paid by the leasing company is not an employee of the mortgage company. After reviewing employee leasing agreements, OFIS has found that hiring, firing, and general supervision of the individual was at the discretion of the leasing company. OFIS' chief concern about leased employees was that the mortgage company would argue that they were not responsible for the actions of the leased loan officers. A second concern was whether consumers would be protected under the mortgage company's bond if a leased loan officer violated the law.

DESCRIPTION OF BILL

The bill would amend section 2 of the MBLSLA, MCL 445.1652, by inserting subdivision (d). The new language would grant an exemption from licensure or registration for a

person who is an employee of a professional employer organization (PEO) as that term is defined in section 4 of the Single Business Tax Act, MCL 208.4 and is solely performing services as a residential mortgage originator of only 1 mortgage broker or mortgage lender. Under the bill, the mortgage broker or mortgage lender is required to direct and control the activities of the individual performing services under this subdivision and shall be responsible for all activities of that individual. Additionally, the mortgage broker or mortgage lender is required to assume responsibility for actions of the individual that are covered by the proof of financial responsibility deposit required in the MBLSLA.

MCL 208.4 defines PEO as an organization that provides the management and administration of the human resources and employer risk of another entity by contractually assuming substantial employer rights, responsibilities, and risk through a professional employer agreement establishing an employer relationship with the leased officers or employees assigned to the other entity by doing all of the following: maintaining the right of direction and control of employees' work, although this responsibility may be shared with the other entity; paying wages and employment taxes of the employees out of its own accounts; reporting, collecting, and depositing state and federal employment taxes for the employees; and retaining the right to hire and fire employees.

SUMMARY OF ARGUMENTS

Pro

OFIS sees merit in what the bill attempts to accomplish, and understands that PEOs can serve a useful purpose. The relationship between a PEO and a licensed or registered mortgage company involves the PEO agreeing to pay the employees certain benefits that neither the licensee nor registrant otherwise provides. In that sense, PEOs can serve a vital role in meeting certain unmet needs of the employees of the licensee or registrant.

Con

OFIS has concerns with the definition of PEO in that it allows for leased employees. OFIS is concerned that mortgage companies could argue that they were not responsible for the actions of a leased loan originator. Another concern is whether consumers would be protected under the mortgage company's surety bond if the leased loan officer violated the law. However, the changes made in the Senate to the language of the bill specifically require a licensee or registrant to assume responsibility for an individual who is an employee of a PEO and who is exempt under this new provision.

The bill does not specifically require a licensed or registered mortgage broker or lender to keep a copy of any contract between the PEO and the mortgage company or to maintain detailed lists of all individuals who are employees of a PEO. However, OFIS is able to require a licensee or registrant to keep certain records and provide certain

documents during routine examinations or specific investigations, and is comfortable with the powers otherwise granted in the MBLSLA.

FISCAL/ECONOMIC IMPACT

OFIS has identified the following revenue or budgetary implications in the bill as follows:

(a) To the Office of Financial and Insurance Services:

Budgetary: None.

Revenue: None.

Comments:

(b) To the Department of Labor and Economic Growth:

Budgetary: None.

Revenue: None.

Comments:

(c) To the State of Michigan:

Budgetary: None.

Revenue: None.

Comments:

(d) To Local Governments within this State:

Comments: None.

OTHER STATE DEPARTMENTS

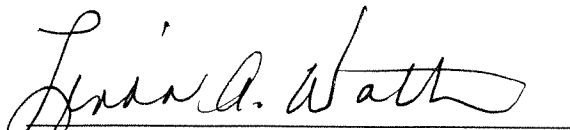
Michigan Department of Treasury.

ANY OTHER PERTINENT INFORMATION

OFIS believes that similar changes should be made to the SMLA.

ADMINISTRATIVE RULES IMPACT

Rules can be promulgated to provide for administration of the act.



Linda A. Watters
Commissioner

7-11-05

Date